

EXHIBIT 2

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK
4 1:18-CV-05775-ERK-CLP

5 -----x
6
7 STAR AUTO SALES OF BAYSIDE, INC.
8 (d/b/a STAR TOYOTA OF BAYSIDE), STAR
9 AUTO SALES OF QUEENS, LLC (d/b/a STAR
10 SUBARU), STAR HYUNDAI LLC (d/b/a
11 STAR HYUNDAI), STAR NISSAN, INC. (d/b/a
12 STAR NISSAN), METRO CHRYSLER
13 PLYMOUTH INC. (d/b/a STAR CHRYSLER
14 JEEP DODGE), STAR AUTO SALES OF
15 QUEENS COUNTY LLC (d/b/a STAR FIAT)
16 And STAR AUTO SALES OF QUEENS
17 VILLAGE LLC (d/b/a STAR MITSUBISHI),

18
19 Plaintiffs,

20
21 v.

22 VOYNOW, BAYARD, WHYTE AND COMPANY, LLP,
23 HUGH WHYTE, RANDALL FRANZEN AND ROBERT
24 SEIBEL.

25
26 Defendants.

27 -----x
28
29 2000 Market Street
30 Philadelphia, Pennsylvania

31
32 August 15, 2022
33 10:09 a.m.

34
35 DEPOSITION of MICHAEL KOUFAKIS, a
36 Plaintiff, held at the above-entitled time and
37 place, taken before Carolyn Crescio, a
38 Professional Shorthand Reporter and Notary
39 Public of the State of Pennsylvania.

40 * * *

A P P E A R A N C E S:

MILMAN LABUDA LAW GROUP, PLLC
Attorneys for Plaintiffs
3000 Marcus Avenue
Suite 3W8
Lake Success, New York 11042
BY: JAMIE FELSEN, ESQ.

MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN, ESQS.
Attorneys for Defendants
620 Freedom Business Center
Suite 300
King of Prussia, Pennsylvania 19406
BY: MAUREEN FITZGERALD, ESQ.

ALSO PRESENT:

Hugh Whyte
Randall Franzen
Robert Seibel
Jeremy Koufakis
Steven Rambam (via phone)

Job No. CS5329457

1 M. KOUFAKIS

2 M I K E K O U F A K I S , the witness herein,
3 after having been first duly sworn by a Notary
4 Public of the State of Pennsylvania, was examined
5 and testified as follows:

6 BY THE COURT REPORTER:

7 Q. Please state your name for the
8 record.

9 A. Mike Koufakis.

10 MS. FITZGERALD: Usual
11 stipulations?

12 MR. FELSEN: Yes.

13 EXAMINATION

14 BY MS. FITZGERALD:

15 Q. Good morning, Mr. Koufakis. My name
16 is Maureen Fitzgerald, and I represent the
17 defendants in this lawsuit that's been brought
18 on behalf of the Star entities. We are here
19 today to take your deposition. Before we begin,
20 I would like to go over some ground rules and
21 instructions. Okay?

22 First off, when I ask a question, I need you
23 to keep your responses verbal, so you can't answer
24 by shaking your head.

25 Okay? is that understood?

1 M. KOUFAKIS

2 the major.

3 Q. How old are you now, sir?

4 A. 62.

5 Q. In terms of the plaintiff, Star
6 Nissan Incorporated d/b/a Star Nissan, you are
7 the executive manager?

8 A. Yes.

9 Q. And that entity was formed in 1991?

10 A. Yes.

11 Q. Are you also the general manager?

12 A. I'm involved in that dealership
13 mostly with office functions and service and
14 parts, not so much in new and used car sales.

15 Q. So is there a title known as general
16 manager for Nissan, in addition to a title as
17 executive manager?

18 A. Yes. At one point in time I was the
19 general manager. Then I became the executive
20 manager. Right now, I would not say it
21 specifically applies to any one person
22 currently.

23 Q. So is it fair to say that at the
24 point you became executive manager, no one else
25 held the position of general manager?

1 M. KOUFAKIS

2 A. It varied over time, but I would say
3 it's pretty safe to say, yes.

4 Q. And you became executive manager in
5 1995?

6 A. I believe so, yes.

7 Q. As part of your preparation, did you
8 review your prior testimony in the Carmen Jones
9 case?

10 MR. FELSEN: Objection. To the
11 extent it's going to require you to
12 reveal attorney/client
13 communications, I instruct you not
14 to answer.

15 Q. Did you review your prior
16 deposition?

17 MS. FITZGERALD: I don't see how
18 that's a communication.

19 MR. FELSEN: Anything he
20 communicated was at the direction of
21 and during meetings with counsel.
22 So I'm going to direct him not to
23 answer any question --

24 A. Repeat the question.

25 MR. FELSEN: -- related to

1 M. KOUFAKIS

2 Q. -- to your knowledge?

3 A. I'm not sure.

4 Q. In terms of chain of command with
5 Nissan, who is higher; a dealer principal, your
6 brother John or executive manager, you?

7 A. Dealer principal.

8 Q. So in terms of the plaintiff Star
9 Auto Sales of Bayside, Inc. d/b/a Star Toyota of
10 Bayside, who's the dealer principal for that?

11 A. I'm sorry. Which entity again?

12 Q. Star Toyota.

13 A. Myself.

14 Q. And that entity was formed in 1995?

15 A. Yes.

16 Q. And you're the 100-percent owner?

17 A. Yes.

18 Q. Is there an executive manager or
19 general manager for that dealership?

20 A. Myself.

21 Q. For the entity known as Star Auto
22 Sales of Queens, LLC d/b/a Star Subaru, who is
23 the dealer principal?

24 A. Myself.

25 Q. And that entity was formed in 2006?

1 M. KOUFAKIS

2 A. Yes.

3 Q. And you're the sole owner and
4 officer?

5 A. Yes.

6 Q. And are you also the sole officer of
7 Toyota?

8 A. Yes.

9 Q. Are you also fulfilling the role as
10 executive manager, general manager for Subaru?

11 A. Yes.

12 Q. And that's been since its inception?

13 A. Yes.

14 Q. For the plaintiff known as Metro
15 Chrysler Plymouth, Inc. d/b/a Star Chrysler Jeep
16 Dodge, who is the dealer principal?

17 A. Steven Koufakis.

18 Q. And that entity was formed in 1990?

19 A. Yes.

20 Q. Is that entity owned equally by your
21 brothers John and Steve Koufakis?

22 A. Yes.

23 Q. Is there an executive manager or
24 general manager for Metro Chrysler Plymouth?

25 A. No. No.

1 M. KOUFAKIS

2 Q. So is it fair to say that Steve
3 Koufakis would fulfill that role?

4 A. Yes.

5 Q. For the entity known as Star Hyundai
6 LLC d/b/a Star Hyundai, who's the dealer
7 principal?

8 A. Currently Steven. Originally I
9 believe it was John.

10 Q. So when it was formed in 2008, was
11 it originally John?

12 A. I believe so.

13 Q. And when did it change?

14 A. A few years later.

15 Q. So sometime around 2011 or so?

16 A. '11, '12, I believe.

17 Q. So for Toyota, going back, when you
18 executed the franchise agreement as dealer
19 principal, was that done in 1995 only, or have
20 there been amendments?

21 A. Toyota has term agreements, so
22 depending on the term, you have to sign when
23 that term expires.

24 Q. Any idea on the frequency of the
25 term?

1 M. KOUFAKIS

2 A. I believe it's perpetual. Not 100
3 percent sure, but I believe.

4 Q. For the entity known as Star Auto
5 Sales of Queens Village, LLC d/b/a Star
6 Mitsubishi, who was the dealer principal?

7 A. I believe it was Steven.

8 Q. Is it still Steven?

9 A. It was terminated. I believe -- I
10 forget exactly what year. 2005 or 2006,
11 somewhere in that area.

12 Q. So your understanding is the entity
13 Star Auto sales of Queens Village LLC, d/b/a
14 Star Mitsubishi no longer exists as a corporate
15 entity?

16 A. Correct. It did terminate -- I'm a
17 little off on the year. It terminated when --
18 shortly before we took on -- shortly after we
19 took on Fiat, which was a separate franchise
20 agreement at the time.

21 Q. Okay. So am I correct that the Star
22 Mitsubishi franchise was established in 2002?

23 A. I believe.

24 Q. And you believe that entity
25 dissolved?

1 M. KOUFAKIS

2 Mitsubishi?

3 A. I'm saying that I was not exactly
4 sure what needed to be done. After a period of
5 time had lapsed, I questioned what needed to be
6 done. But I don't specifically recall.

7 Q. Who were the owners of Star
8 Mitsubishi?

9 A. I believe it was my brothers John
10 Koufakis, Steven Koufakis, myself. And a small
11 percentage to Gus Tsoikas, T-S-O-L-K-A-S. And
12 Richard Provenzano.

13 Q. Is there any documentation -- well,
14 there would be the franchise agreement that
15 Steve Koufakis signed with Mitsubishi, correct,
16 establishing the franchise?

17 A. Yes.

18 Q. Is there a separate document that
19 sets forth the ownership that you just referred
20 to?

21 A. I believe so, yes.

22 Q. What was the breakdown of that
23 ownership? Was there a majority owner?

24 A. If I recall, I believe it was myself
25 and my two brothers, 30 percent; Gus Tsoikas

1 M. KOUFAKIS

2 Q. So I don't think we got an answer on
3 who the dealer principal was for Fiat.

4 A. I believe it was my brother Steve.
5 I believe I answered that.

6 Q. And who were the owners of Fiat?

7 A. I believe it was my brother Steven.

8 Q. Hundred percent?

9 A. I believe that was the end result.

10 Q. Now, the dealerships have a position
11 that they refer to as an office manager?

12 A. Yes.

13 Q. And is that essentially the
14 equivalent of a controller, to your knowledge?

15 A. I would not say the equivalent, by
16 my definition.

17 Q. And how would you distinguish the
18 two?

19 A. Office manager, I think is the head
20 person in the office, where maybe a controller,
21 by my definition, would maybe have an accounting
22 degree, a little bit higher level of expertise.

23 Q. So the office manager, by your
24 definition, would be the most-senior level
25 employee in the dealerships accounting

1 M. KOUFAKIS

2 department, correct?

3 A. I would say yes. Correct.

4 Q. And for purposes of the time period
5 we are talking about, roughly 2010 to 2016, '17
6 period, am I correct that Vivian Karouzakis was
7 the office manager for the Nissan Toyota and
8 Subaru dealerships?

9 A. Yes.

10 Q. And in that role she reported
11 directly to you?

12 A. Yes.

13 Q. And you supervised her?

14 A. Yes.

15 Q. She had been hired in 1986 by a
16 predecessor of the Star entities; is that
17 correct?

18 A. Yes.

19 Q. And did she become -- did she move
20 to the position of office manager in the 1990s
21 for an entity known as Island Chrysler?

22 A. Yes.

23 Q. And Island Chrysler was one of the
24 predecessors of the Star entities we are here
25 about, correct?

1 M. KOUFAKIS

2 A. Yes.

3 Q. Her sister Debbie Theocharis, am I
4 correct that she, during that same time period,
5 2010, 2016, '17, she would have been the office
6 manager for the Chrysler and Hyundai franchises?

7 A. Definitely Chrysler. Yes, there was
8 maybe some shared responsibility between the two
9 for Hyundai. But I think it was more Debbie.

10 Q. Okay. And did you supervise her?

11 A. I was the least involved in the
12 Chrysler store. She fell mostly under the
13 direction of my brother Steven. So I would say
14 it depends on what the issue was specifically,
15 at hand. But I'd say mostly it fell under
16 Steven and somewhat under myself.

17 Q. Okay. And am I correct that that
18 position of office manager has since been
19 filled, let's say, at some point in 2017 for all
20 of these dealerships, by Jacque Cutillo?

21 A. Yes.

22 Q. So she now does the job that both
23 Vivian and Debbie did combined?

24 A. Correct.

25 Q. For the dealerships that are named

1 M. KOUFAKIS

2 in this lawsuit, is it true that they all shared
3 the same space for purposes of office
4 administration tasks?

5 A. Yes.

6 Q. And that was the second floor of the
7 facility located at 206-26 Northern Boulevard?

8 A. Yes.

9 Q. Were there any job descriptions for
10 any of the folks that worked in the accounting
11 or office location for any of the franchises?

12 A. Not that I can specifically recall.
13 No.

14 Q. Whose responsibility would it have
15 been, to your knowledge, to establish job
16 descriptions?

17 A. A manager typically is in charge of
18 the people below them, so I guess if it was
19 Vivian, for whatever people that directly
20 reported to her or any other manager, in any
21 other department.

22 Q. And did you have responsibility to
23 ensure that Vivian had, in fact, done that?

24 A. Again, it was not necessarily a
25 specific requirement that I would have made. I

1 M. KOUFAKIS

2 not an owner, or a dealer principal? He was not
3 an executive manager for any of these, correct?

4 A. Correct.

5 Q. So what, if anything, was his formal
6 role?

7 A. I don't think he had a formal role.

8 Q. Am I correct to state that he was
9 the one who established the predecessors to the
10 Star entities?

11 A. Yes.

12 Q. So this is a family business that he
13 established?

14 A. Yes.

15 Q. And he grew it and passed it on to
16 his sons?

17 A. Yes.

18 Q. What did he die of?

19 A. A weak heart.

20 Q. He had a heart attack?

21 A. No. I'll rephrase it. He died in
22 his sleep. I don't think there was an official
23 cause. But the heart was very weak.

24 Q. Understood. Was there a period of
25 time when he stopped coming into the dealership

1 M. KOUFAKIS

2 year-end financial statement for each of the
3 dealerships, with an accompanying opinion as to
4 their review; is that your understanding?

5 MR. FELSEN: Objection.

6 A. Yes.

7 Q. What, if anything, did Voynow do --
8 I'm sorry. What, if anything, did any of the
9 Star entities -- strike that.

10 During the course of their engagement, were
11 any of the Star entities required to have reviewed
12 financial statements?

13 A. Every manufacturer requires
14 financial statements to be submitted on a
15 monthly basis.

16 Q. So did you understand that the
17 reviewed financial statements, that you claimed
18 to have engaged Kera, Weiner to do, were they
19 done on an annual basis, or were they done on a
20 monthly basis?

21 A. The -- again, every manufacturer
22 requires a monthly financial statement. They
23 would come in quarterly to review the accounts
24 and the accounting procedures that were being
25 done in the office.

1 M. KOUFAKIS

2 A. Not necessarily. I was less
3 involved at that time. And at that point in
4 time, I was on the sales floor and less involved
5 with the office functions.

6 Q. Do you have any reason to believe
7 that the services for which you -- for which the
8 Star entities or their predecessors hired George
9 Pavledis, were different in any way from the
10 services you hired Kera, Weiner to do?

11 MR. FELSEN: Objection. Calls
12 for speculation.

13 A. I don't know.

14 Q. Is there anything that was required
15 or mandated by a bank or a franchisor that
16 required a difference in the level of accounting
17 services?

18 MR. FELSEN: Objection.

19 A. No.

20 Q. So going back to Kera, Weiner, you
21 said you hired them to come in and verify the
22 amounts in each account, correct?

23 A. Correct. That was my
24 understanding --

25 MR. FELSEN: I'm going to object

1 M. KOUFAKIS

2 Q. How was Mr. Weiner's firm paid? Do
3 you know?

4 A. I don't recall.

5 Q. Do you recall if they would send you
6 bills a couple of times a year?

7 A. Honestly, I don't recall. See, at
8 that point in time, I was mostly -- my job
9 functions were mostly in sales. And we had
10 three dealerships with three different offices,
11 and I was not -- I'm more concerned about
12 selling Nissans than getting involved in other
13 things.

14 Q. Understood. But also at the point
15 in time, you were the most senior level in the
16 dealerships for Toyota, Nissan --

17 A. It didn't exist at the time.

18 Q. Well, Toyota was formed in 1995.

19 A. Right. Nissan was in '91. I was
20 predominantly -- I would say more of a general
21 sales manager at that point in time at Nissan,
22 not involved with the Dodge store we had or
23 another Chrysler store that we had had.

24 Q. Okay. Let me ask you this. So when
25 Mr. Weiner's firm was hired in 1992, at that

1 M. KOUFAKIS

2 point, you used manual accounting system,
3 correct?

4 MR. FELSEN: Objection.

5 A. Yes. So when we acquired the Nissan
6 store in April of '91, we actually inherited the
7 computer system from the prior dealers. And
8 that was -- so that was the first one from the
9 inception, was not on a manual system.

10 Q. What was the name of that system?

11 A. It was the Rentals and Rentals
12 VIMNet system.

13 Q. Was Mr. Weiner's firm familiar with
14 the Rentals and Rentals system when they came
15 onboard?

16 A. Yes.

17 Q. And that version of the Rentals and
18 Rentals system, was that a system that was used
19 across the entire Nissan dealership or just the
20 accounting function?

21 A. It was for accounting and parts, but
22 not services.

23 Q. And did you provide Mr. Weiner's
24 firm with remote access to the Rentals and
25 Rentals system?

1 M. KOUFAKIS

2 Q. So during Mr. Weiner's engagement,
3 who prepared -- the office manager prepared the
4 financial statements?

5 A. Correct.

6 Q. And did the office manager prepare
7 the trial balance?

8 A. I believe so because I think that's
9 what needs to be done in order to -- everything
10 has to be -- the financial statement is the end
11 result of a lot of accounting work.

12 (Whereupon, an off-the-record
13 discussion was held.)

14 Q. How many comprised the team of
15 accountants from Larry Weiner's firm, that
16 provided services? Do you know?

17 A. How many came and visited?

18 Q. Yes.

19 A. I think, typically, to the best of
20 my recollection, it was him and maybe someone
21 else.

22 Q. So to your recollection, there were
23 two accountants that came in for each visit?

24 A. I believe so.

25 Q. And was Mr. Weiner's firm hired to

1 M. KOUFAKIS

2 A. No.

3 Q. For anything?

4 A. No.

5 Q. Why not?

6 A. I just didn't.

7 Q. Now, when was Mr. Weiner's firm
8 disengaged?

9 MR. FELSEN: Objection.

10 A. I believe it was late 1996.

11 Q. And did they end the engagement or
12 did Star?

13 A. Myself.

14 Q. And why?

15 A. For a number of years prior, they
16 insisted on doing the LIFO calculation
17 themselves. Ultimately it was disallowed by the
18 IRS, and we had to capture that money as income,
19 and there was interest and penalties involved.
20 And I was not too happy about that. And that
21 was the main reason I terminated the
22 relationship.

23 Q. Was this related to Toyota?

24 A. All of the stores.

25 Q. All of them. Okay. Was there an

1 M. KOUFAKIS

2 IRS audit at some point regarding this issue, or
3 any other tax issue?

4 A. I don't know if it was --

5 MR. FELSEN: Objection.

6 A. -- an IRS audit. I just know that
7 the LIFO calculation got disallowed.

8 Q. Okay. So you know there was some
9 interaction between the IRS and Star?

10 A. Absolutely.

11 Q. And that prompted your decision to
12 end the engagement?

13 A. Yes.

14 Q. And was that issue in connection
15 with tax returns that Mr. Weiner's firm had
16 prepared on behalf of the Star entities?

17 A. Yes.

18 Q. And then in 1996, then Voynow was
19 engaged; is it fair to say?

20 A. Yes.

21 Q. And then that engagement for Voynow
22 ended in roughly November of 2017, December
23 of 2017; is that your recollection?

24 A. November 3rd of 2017.

25 Q. Since November 3rd of 2017 -- strike

1 M. KOUFAKIS

2 that.

3 Since 2016, what other accountants has
4 any of the Star entities engaged?

5 A. Rosenfield & Company and Withum.

6 Q. And Rosenfield was hired in 2017?

7 A. Yes. I believe April 18th of 2017.

8 Q. And what services was Rosenfield
9 engaged to perform?

10 A. Forensic accounting regarding the
11 theft that had taken place.

12 Q. Did that engagement, at any point --
13 (Whereupon, an off-the-record
14 discussion was held.)

15 Q. At any point, did the scope of the
16 engagement for which Rosenfield was hired, did
17 that expand or change beyond forensic accounting
18 services?

19 A. Yes.

20 Q. What did it expand to and when?

21 A. He took over after we terminated our
22 relationship with Voynow, to do regular
23 accounting and tax returns.

24 Q. And was he continued to be engaged
25 to provide forensic accounting services?

1 M. KOUFAKIS

2 A. Yes.

3 Q. And that would be through the
4 duration of his engagement?

5 A. Yes.

6 Q. And that engagement ended in April
7 of 2020?

8 A. Approximately, maybe slightly
9 sooner.

10 Q. What is your understanding of what a
11 forensic accounting is?

12 A. Prove how much money was stolen and
13 how it was stolen.

14 Q. Did you understand that a forensic
15 accounting is designed to detect fraud?

16 A. Yes.

17 Q. Has any of the Star entities hired
18 any other forensic accountant other than
19 Rosenfield?

20 MR. FELSEN: Objection. Anything
21 related to forensic accounting is
22 protected by the work product,
23 attorney/client privilege.

24 MS. FITZGERALD: So I'm not
25 asking for the litigation expert.

1 M. KOUFAKIS

2 Q. Explain.

3 A. I get a bill, I glanced at it. I
4 look at the bottom line. I didn't tear it apart
5 in detail.

6 Q. Did the Star entities ever hire an
7 accountant by the name of Nick Chester?

8 A. Yes.

9 Q. So that would have been another
10 accountant that was hired after 2016?

11 A. I wouldn't necessarily say he was
12 hired as an accountant.

13 Q. Okay. What's your understanding as
14 to what he was hired for?

15 A. Another person to -- it was a very,
16 very short engagement. At the time, they were
17 recommended by Voynow, to -- and this was early
18 on. This was in February of 2017 to maybe just
19 verify some of the theft that had -- were
20 discovered up until that point, but not
21 really...

22 Q. So you said to verify the theft that
23 had been discovered up until that point. So --

24 A. I guess you could say to be a fresh
25 set of eyes to look over the books, so to speak.

1 M. KOUFAKIS

2 Q. Had the thefts that had been
3 discovered up to that date, February of 2017,
4 would that have been the theft involving Vivian
5 and her personal creditors?

6 A. Yes.

7 Q. Was it your understanding that
8 Mr. Chester was engaged to look further at any
9 issues involving Vivian?

10 A. Yes.

11 Q. And was there an engagement letter
12 between any of the Star entities and
13 Mr. Chester?

14 A. I don't specifically recall.

15 Q. Was there an engagement letter
16 between Rosenfield and the Star entities?

17 A. Just initially.

18 Q. Okay. So your testimony is that
19 there was one engagement letter that was
20 prepared around April 18, 2017?

21 A. Shortly thereafter for a limited
22 amount of time, maybe a couple of months.

23 Q. Other than that, any other
24 engagement that you had with Rosenfield for any
25 services that they provided, would that have

1 M. KOUFAKIS

2 Q. Thank you for that clarification.

3 A. What was the next question?

4 Q. Has any of Star entities ever hired
5 an accountant or an accounting firm to conduct
6 an audit or prepare audited-financial
7 statements?

8 MR. FELSEN: Objection.

9 A. Audited-financial statements?

10 Q. Or to conduct an audit.

11 A. Sorry. Repeat that question again.

12 Q. Has any of the Star entities ever
13 hired an accountant to perform an audit or
14 prepare audited-financial statements?

15 MR. FELSEN: Objection.

16 A. By my definition of
17 audited-financial statements, no. As far as
18 performing an audit, to me, a forensic
19 accountant is -- well, it's our accountant's job
20 to perform the audit.

21 Q. So is it your contention that you
22 hired accountants in the past to perform audits?

23 MR. FELSEN: Objection.

24 A. That was part of their job
25 responsibility.

1 M. KOUFAKIS

2 Q. And would that be Mr. Weiner's firm?

3 A. Yes.

4 Q. And would that be Voynow?

5 A. Yes.

6 Q. And would that be Rosenfield?

7 A. Yes.

8 Q. What's your understanding -- do you
9 have -- strike that.

10 Do you have any understanding as to the
11 difference between the terms "audit," "review" and
12 "compilation"?

13 A. Yes.

14 Q. What is your understanding of what a
15 "compilation" is?

16 A. So I believe it was in the latter
17 half of 1996, when I was interviewing Voynow, it
18 was in my office, at my desk. Randy Franzen was
19 on my right, Hugh Whyte was on my left, and they
20 explained to me the differences between the
21 three.

22 They told me that compilation was just
23 basically a cursory check of the numbers. They had
24 explained to me that reviewed was much more
25 in-depth, and that the highest level was audited

1 M. KOUFAKIS

2 accounting work. I indicated to them that I wanted
3 the highest level, which was the audited. They
4 said that that was -- that was really not
5 necessary, that it was very high in cost, and
6 typically only reserved for publicly-traded
7 companies. But what we ultimately settled on was
8 something -- and Randy specifically told me at that
9 meeting that there was something in between, more
10 than review, but less than audited. And he said
11 when they would come into the dealerships on a
12 quarterly basis, they would send someone, let's
13 say, to the Toyota parts department and do random
14 VIN checks. Then on another meeting, they might go
15 to Chrysler used cars and check -- do a physical of
16 the used car inventory.

17 So it was more than review, but not quite
18 fully audited. That was discussed. That's what
19 they promised. That's what I agreed to, and that's
20 what they did.

21 Q. Okay. So my question was what your
22 understanding was of those terms. And you told
23 me that -- you gave me a reference to a meeting
24 you had with Voynow sometime in '96, correct?

25 A. Yes.

1 M. KOUFAKIS

2 A. Yes.

3 Q. Did each of the dealerships have
4 their own operating account with Investors Bank?

5 A. Yes.

6 Q. And there was no requirement by --
7 strike that.

8 Did any of the dealerships have any type of
9 loan relationship other than floor plan and
10 financing? Was there any other financing or loan
11 obligations with any bank?

12 MR. FELSEN: Objection.

13 A. No.

14 Q. So there was no requirement by
15 Investors Bank for audited-financial statements
16 or reviewed-financial statements?

17 MR. FELSEN: Objection.

18 A. No, no one required it from us.

19 Q. And did the national dealers, did
20 they have a requirement for audited- or
21 reviewed-financial statements for any of the
22 dealerships?

23 A. No. I don't think they specifically
24 required it. They just wanted financial
25 statements, but I think it's inherent in the

1 M. KOUFAKIS

2 spirit of the agreement that it's accurate.

3 Q. Okay. So you believe there's
4 something in that dealer franchise agreement
5 that would reference what was required as far as
6 financial statements? Or what the understanding
7 was as to financial statements?

8 MR. FELSEN: Objection.

9 A. I don't think it specifically is
10 spelled out, but...

11 Q. The spirit of the agreement
12 references it?

13 A. I believe so.

14 Q. Okay. In terms of other financing,
15 there was floor plan financing for the
16 automobile inventory, correct?

17 A. New vehicles, yes.

18 Q. And that was with JP Morgan Chase?

19 A. From approximately 2006.

20 Q. Do you have any understanding as to
21 why any of the Star entities would pay for audit
22 services, and not require audited financial
23 statements?

24 MR. FELSEN: Objection.

25 A. Repeat that again.

1 M. KOUFAKIS

2 Q. Sure. Do you have any understanding
3 as to why any of the Star entities would pay for
4 audit services, but not require --

5 A. Yeah, because I wanted it.

6 Q. -- but not require audited financial
7 statements?

8 MR. FELSEN: Objection.

9 A. I wanted the highest level of
10 accuracy, as possible.

11 Q. And why was it that you didn't ask
12 for audited financial statements then, if you
13 wanted the highest level of accuracy possible?

14 A. I took Voynow's recommendation, that
15 it was not necessary and overly burdensome and
16 costly.

17 Q. If you believe that you paid for
18 something higher than a review, but not quite an
19 audit, why wouldn't you have at least wanted
20 reviewed financial statements?

21 MR. FELSEN: Objection.

22 A. You're making the assumption it was
23 not.

24 Q. Did you ever get financial
25 statements prepared by Voynow, with an opinion

1 M. KOUFAKIS

2 stating that they reviewed them and what they
3 found?

4 A. They didn't prepare the financial
5 statements, but they reviewed the accounts that
6 were used to prepare the financial statements.

7 Q. Did you ever get anything as far as
8 an opinion from them?

9 A. Not that I can recall.

10 Q. But yet you believe you paid for it?

11 A. I believe that the accounting
12 statements we were producing was just short of
13 an audited statement.

14 Q. And that -- when you say "accounting
15 statement," what is it specifically you're
16 referring to?

17 A. The one the dealership produces for
18 the manufacturers and what is ultimately
19 utilized to ultimately do the tax returns.

20 Q. Are you talking about a balance
21 sheet, an income statement? What are you
22 talking about when you say an "accounting
23 statement"?

24 A. A financial statement required by
25 all of the manufacturers.

1 M. KOUFAKIS

2 Q. Which is what?

3 A. It is a -- anywhere from
4 four-to-seven page document. Page 1 is balance
5 sheet, page 2 is, you know, the total of -- it's
6 typically expenses. Page 3 and 4 are the income
7 and expenses of the various departments.

8 Q. And that three-to-four page
9 financial statement --

10 A. It's at least four-to-seven.

11 Q. Okay. This financial statement was
12 prepared by whom?

13 MR. FELSEN: Objection.

14 A. It's printed by the office manager
15 and sent by the office manager. But it's the
16 culmination of the accounts that Voynow
17 reviewed.

18 Q. Let's go back to the current
19 accountant. It's Withum, did you say?

20 A. Yes.

21 Q. Where are they based?

22 A. I believe New Jersey is the main
23 headquarters.

24 Q. Who's your contact there? Who's the
25 main accountant?

1 M. KOUFAKIS

2 A. Yes.

3 Q. What is the title of this position?

4 A. I didn't specifically give it a
5 title.

6 Q. And you don't know this person's
7 name?

8 A. I have to look it up on my phone.

9 Q. Did you advertise the position?

10 A. No.

11 Q. How did you hear of this person?

12 A. From Steve Rambam.

13 Q. How did you first hear about Voynow?

14 A. Through John Sharon, my Rentals and
15 Rentals sales rep.

16 Q. And did you ask him for a reference
17 because you were looking to make a change?

18 A. Yes.

19 Q. And what did he tell you about
20 Voynow?

21 A. He highly recommended them. He told
22 me that they had attended all of their training
23 sessions, and that they knew the rental system
24 better than anyone that he knew.

25 Q. When you said they had attended all

1 M. KOUFAKIS

2 the --

3 A. I would say it was not specifically
4 discussed on the number of people. But it was
5 the understanding that they would come in with
6 other accountants from the firm to do the work.

7 Q. And is it your understanding that
8 there was a specific discussion that Voynow
9 would make quarterly visits?

10 A. Yes.

11 Q. And was there any discussion that
12 you were, you, specifically were to meet with
13 them each quarter?

14 A. It was not specifically said, but
15 initially, the accounting offices were
16 in separate offices. By 2000, it got
17 consolidated to one. So typically, the office
18 manager would tell me when they would be coming
19 in.

20 Q. And would you make a point of making
21 sure you met with them each quarter?

22 A. Yes. Unless I was out of town, yes.

23 Q. So if there were no quarterly
24 visits, then is it fair to say that based on
25 your understanding, Voynow was not meeting the

1 M. KOUFAKIS

2 terms of their agreement?

3 A. Yes.

4 Q. And you would have known that
5 because you were supposed to meet with them
6 every quarter?

7 A. Well, it's not specifically said.
8 It was their job to come in every quarter, and
9 it was just natural that while they were there,
10 I would make it a point of stopping by. It was
11 not required, but --

12 Q. But you said you hired them to come
13 out every quarter, correct?

14 A. That was -- that was the original
15 understanding, yes.

16 Q. Did that ever change?

17 A. Well, in 2017, I think they just
18 showed up once.

19 Q. So prior to 2017 did it ever change?

20 A. It may have gone to -- again, I
21 didn't keep exact dates. It may have gone from
22 quarterly to maybe three times a year.

23 Q. When did that change?

24 A. I could not tell you.

25 Q. Okay. So was it prior to 2010?

1 M. KOUFAKIS

2 A. I'm not sure.

3 Q. And did you specifically negotiate
4 that change or agree to that change?

5 A. No.

6 Q. Did you approve that change?

7 A. No.

8 Q. How did you become aware of that
9 change?

10 A. Again, I didn't keep track of
11 specific dates. I can't say whether, in fact,
12 it was -- so I'm not completely sure, because I
13 didn't sit there and mark off, okay, they're
14 going to come in on X amount of days or X. So
15 it was not appointments with me -- were not
16 made. They were usually done with the office
17 manager, based on, I guess, their workload.

18 Q. So based on your response, are you
19 testifying that Voynow was to coordinate its
20 visits to the dealership with the office
21 managers, as opposed to you?

22 A. Yes.

23 Q. And it was not necessary that you be
24 there when Voynow was there?

25 A. No.

1 M. KOUFAKIS

2 Q. So there was this initial meeting in
3 1996, late 1996, between you and Hugh and Randy.
4 And then at some point, Voynow was hired shortly
5 thereafter. Was there annual meetings,
6 thereafter, where you met with Voynow and
7 decided this is what I'm hiring you to do for
8 1998 --

9 A. No.

10 Q. Or was there just that initial
11 meeting where they were hired?

12 A. It was the initial meeting that they
13 were hired.

14 Q. Okay. And were you authorized to
15 hire them on behalf of the other dealerships?

16 A. Yes.

17 Q. Did you have to consult with any of
18 your brothers regarding Voynow?

19 A. No.

20 Q. Did you?

21 A. I mean, I clued them in, but they
22 left it up to me.

23 Q. So they didn't have to meet Voynow
24 before Voynow was hired?

25 A. I mean, I did it as a matter of

1 M. KOUFAKIS

2 courtesy. I don't think I was -- I think just
3 out of common courtesy, before you make a move,
4 you keep them abreast of the situation. I don't
5 think it was required, but I think it's the
6 right thing to do.

7 Q. But as far as the discussion about
8 the level of services that were going to be
9 provided, your brothers were not involved in
10 that? That was you?

11 A. Yes.

12 Q. Now, Voynow was hired to prepare the
13 tax returns, correct, the corporate tax returns?

14 A. Yes.

15 Q. And you, as the officer of the
16 dealerships, were required to actually sign off
17 on the tax returns before they were filed,
18 correct?

19 A. Well, the ones that I could --
20 typically, I don't believe I signed for the
21 dealerships that I had no ownership in.

22 Q. But for the ones that you did, you
23 signed?

24 A. Yeah, yeah.

25 Q. In signing those, did you understand

1 M. KOUFAKIS

2 that Voynow was not obligated or undertaken to
3 verify the information that was set forth on
4 those tax returns?

5 A. Say it again.

6 Q. Sure. As the taxpayer signing the
7 tax returns --

8 A. Are we talking corporate or
9 personal?

10 Q. Corporate. On behalf of the
11 corporation. Did you understand that Voynow was
12 not obligated or undertaken to verify the
13 information that the Star dealership set forth
14 on the tax return?

15 A. They were responsible for true and
16 accurate financial statements..

17 Q. I'm asking you about a tax return,
18 not a financial statement.

19 A. Well, it derives from the financial
20 statement. So I would say maybe not quite to
21 the level of being audited, but I do believe it
22 was their job to verify it.

23 Q. Now, Voynow prepared the 2016
24 corporate tax return prior to being disengaged.
25 Do you recall that?

1 M. KOUFAKIS

2 claimed amount to the roughly 4.5 million, that
3 you alluded to earlier?

4 MR. FELSEN: Objection.

5 A. I don't believe so.

6 Q. What is your understanding as to
7 what the amount of loss claimed --

8 A. I don't know, because if the money
9 never comes in -- it's a lower profit, as
10 opposed to -- it's money you should have
11 received, but didn't, so you're not necessarily
12 paying tax on money you never received in the
13 first place.

14 Q. So it's a tax savings?

15 A. It's less income.

16 Q. Which would ultimately result in a
17 tax savings?

18 A. Possibly.

19 Q. Has anybody looked -- well, strike
20 that.

21 You said the '16, '17 and '18 were all filed
22 simultaneously, correct?

23 A. Yes.

24 Q. But from what I understand, there
25 was alleged fraud discovered beyond the 2018 tax

1 M. KOUFAKIS

2 A. Yes.

3 Q. When did you -- how often did you
4 review their bills?

5 A. I mean, if I signed the check, it
6 would typically be attached to the check. And
7 typically at the end of the year, I would just
8 ask what did we pay them over the last
9 12 months.

10 Q. So would you review the bills at the
11 end of each year, or did you just review the
12 number?

13 A. More the dollar amount. The bills
14 didn't really say that much.

15 Q. Did you ever, at any point, receive
16 anything in writing from Voynow, setting forth
17 the terms of their engagement?

18 A. I said I don't believe so.

19 Q. I think I asked you specifically
20 right after the meeting in 1996. So this
21 question was any point thereafter.

22 A. The only one I can specifically
23 remember I believe was in December of '16, that
24 one was presented to me for the business. I
25 think there was one or two possibly on my

1 M. KOUFAKIS

2 personal. Excluding the personal, I believe
3 specifically in December of '16, one was
4 presented to me.

5 Q. So you said one was presented to you
6 in December of 2016. Do you have a recollection
7 as to how that was presented and who presented
8 it?

9 A. I believe Bob Seibel presented it.

10 Q. In what context?

11 A. At some point it was sent. I don't
12 know if it was an email or mail or discussed. I
13 don't remember specifically. I think at some
14 point I believe it appeared.

15 Q. Do you believe he gave it to you?

16 A. I don't specifically recall.

17 Q. You just remember at some point --

18 A. I think at some point it came up. I
19 don't know if it was at a year-end visit or
20 mailed.

21 Q. But you remember having an
22 engagement letter in front of you --

23 A. At some point it came up. I don't
24 remember exactly how.

25 Q. And this was in December of 2016 --

1 M. KOUFAKIS

2 to you later that month?

3 A. I believe so.

4 Q. And you wouldn't sign it because you
5 said you viewed it as cover-your-ass-type --

6 A. Yeah. It was not -- to be honest
7 with you, at that point in time, that was the
8 least of my concerns.

9 Q. Was anybody else present -- did you
10 convey that view to Bob Seibel, when you told
11 him you were not going to sign it?

12 A. Yeah, I believe so.

13 Q. Was anybody else present?

14 A. I don't know if anyone was present
15 for that. No, I don't know.

16 Q. And other than that December of 2016
17 engagement letter, is it your testimony that you
18 had never seen any engagement letters for prior
19 years from Voynow?

20 A. Yes, that I can recall.

21 Q. Did you ever ask at any point of any
22 of your current or now former employees, whether
23 they were aware of engagement letters being sent
24 by Voynow?

25 A. No.

1 M. KOUFAKIS

2 Q. To this day, have you ever asked
3 anybody?

4 A. Have I asked my employees if they
5 received one?

6 Q. So you're saying, other than the
7 2016 engagement letter -- I'm only speaking
8 about the corporate side. You're not aware of
9 any other prior engagement letter being sent or
10 provided by Voynow, correct?

11 A. Correct.

12 Q. So my question is: Have you asked
13 any of your employees, either current employees
14 or employees who no longer work for you, whether
15 they were aware of engagement letters being
16 provided by Voynow?

17 A. No. No. I don't know why I would.

18 Q. Is it possible that documents were
19 received, that you might not be aware of or
20 might not have seen?

21 A. Not for Toyota.

22 Q. For other dealerships?

23 A. I guess anything is possible.

24 Q. To your knowledge, was there ever a
25 file kept for Voynow documents?

1 M. KOUFAKIS

2 A. Correct.

3 Q. So you could not have entered into
4 an agreement for services on their behalf when
5 they did not exist at that time, agreed?

6 MR. FELSEN: Objection.

7 A. I mean, not specifically for those
8 dealerships. But I would say on behalf of the
9 group, as we acquired over time -- as we
10 acquired and -- acquired franchises or sold
11 them, it was the understanding that the scope of
12 the work was the same, regardless of what
13 franchise we might have at any given time.

14 Q. That was your understanding? Your
15 impression of what the understanding was?

16 A. Yes.

17 Q. But there was no actual meeting once
18 those entities were, thereafter, formed?

19 A. No actual meeting, no. But I think
20 it was a given.

21 Q. I think you said that the Rentals
22 system was acquired around 1992, when you
23 acquired the Nissan dealership?

24 A. Correct. That was the VIM Net.

25 Q. Did the version of the Rentals

1 M. KOUFAKIS

2 system being used change?

3 A. Yes.

4 Q. When did it change and to what?

5 A. It went to the Era system, which I
6 believe was late 1994.

7 (A lunch break was taken.)

8 Q. Back on the record. Mr. Koufakis, I
9 just want to touch on some of the topics we
10 talked about earlier. Are aware specifically of
11 the difference in the Voynow-prepared 2016
12 corporate returns, to what was actually filed?

13 MR. FELSEN: Objection.

14 A. No.

15 Q. Has there been any IRS audit of the
16 '16, '17 or '18 tax returns?

17 A. No.

18 Q. When you signed those corporate
19 returns for the dealerships that you were
20 authorized to sign, did you understand that
21 those Star dealerships were responsible for the
22 completeness and accuracy of the information
23 used to prepare the tax return?

24 A. Yes.

25 Q. Did you ever meet somebody by the

1 M. KOUFAKIS

2 retained in the system.

3 Q. I take it you had the highest level
4 of access?

5 A. Yes.

6 Q. Do you also have remote access?

7 A. Yes.

8 Q. Did Vivian have remote access?

9 A. Yes.

10 Q. Did Debbie?

11 A. I don't believe so.

12 Q. Does Jacques?

13 A. Yes.

14 Q. Do your brothers have remote access?

15 A. No.

16 Q. Have you provided remote access to
17 anybody who was not an employee of Star?

18 A. I believe Voynow at some point had
19 capability of doing it. I'm not sure if they
20 utilized it.

21 Q. So other than Voynow, did anybody
22 else, to your knowledge, have remote access --

23 A. No.

24 Q. -- to your Rentals to Rentals
25 system?

1 M. KOUFAKIS

2 exist in the system that would show what level
3 of access was provided?

4 A. If the user ID still exists, the
5 answer would be yes.

6 Q. But you keep the user IDs?

7 A. Yes. I'm not sure if they were
8 deleted, off the top of my head. But I can
9 check.

10 Q. Did you delete the user IDs for
11 Vivian or Debbie?

12 A. So the way the system works -- the
13 answer is I'm not sure. But the way the system
14 works, is if you don't log in -- for sure once
15 they were terminated, the password was changed.
16 If the system -- if you don't log in with any
17 user for a 30-day period, it locks you out. It
18 requires you to change it at least after 30
19 days. As a general rule, when someone is
20 terminated, their password is immediately
21 changed. If someone is -- if you forget or, you
22 know, it just renders inactive. It will lock
23 you out. You have to unlock it.

24 Q. Do you have a recollection of
25 providing Voynow with remote access for the

1 M. KOUFAKIS

2 first time in 2017, in connection with asking
3 them to help Jacques?

4 A. Possibly, but not specifically. If
5 there was a need to, and they wanted it, I would
6 have given it to them. I don't specifically
7 remember if they had it or not. It gets a
8 little involved.

9 Q. Is it possible that the first time
10 Voynow was provided remote access was in 2017,
11 in connection with your request to help Jacques?

12 MR. FELSEN: Objection.

13 A. I would say it's possible after the
14 firewall had been installed. It's possible.

15 Q. I don't understand. So are you
16 saying that you believe you gave Voynow remote
17 access at some point after 2015?

18 A. What I'm saying is once the firewall
19 is installed, you need to have this other
20 software installed in order to accomplish it.
21 Prior to that, you didn't. You could just use
22 your regular user ID and log in. It didn't
23 matter if you were inside or outside of the
24 dealership, as long as you knew the phone number
25 to dial in this.

1 M. KOUFAKIS

2 After the firewall, it was required. So it
3 gets a little bit more complicated. I think there
4 was a period of time where they did get it.

5 Q. But you can't state when?

6 A. No. No. I'm not sure if they did.
7 I think so. I'm not a hundred percent sure.

8 Q. Is there any way that you can check
9 within the system when somebody logs in
10 remotely?

11 A. It typically tells you the last date
12 and time or the last time someone logged in. It
13 does maintain a history of the activity, but it
14 might be like a rolling 30 days or something,
15 for every user.

16 Q. But those records could be archived
17 and accessible?

18 A. Which specifically, again?

19 Q. A log showing the history of when
20 someone is accessing the system virtually.

21 A. I don't think it gets maintained on
22 the system. I think it's just a rolling 30
23 days, to the best of my knowledge.

24 Q. Would you agree that without remote
25 access, the only way Voynow would be able to see

1 M. KOUFAKIS

2 what was happening, as far as journal entries,
3 would be when they were actually physically
4 on-site?

5 A. Yes.

6 Q. Did any of the Star entities have
7 bonding or fidelity coverage?

8 A. I'm sorry. Repeat the question.

9 Q. Did any of the Star entities have
10 bonding or fidelity coverage?

11 Do you know what that is?

12 A. For whom? The employees?

13 Q. Any shape or form. Did you have
14 that coverage?

15 A. I believe it's a requirement in New
16 York for a car dealer to have some sort of bond
17 for a motor vehicle license. I think it's a
18 state requirement.

19 Q. So is there -- I'm referring to
20 insurance for employee theft or fidelity issues,
21 sometimes referred to as bonding coverage.

22 A. Insurance to insure theft?

23 Q. So if there was employee theft,
24 there are insurance products available to
25 protect employers from that theft. So my

1 M. KOUFAKIS

2 A. Not in one shot. That was a unique
3 situation where she exploited a loophole that I
4 don't think Rentals and Rentals are aware of.

5 Q. But you would have expected that
6 Voynow, who you hired to detect fraud and verify
7 every account balance with the highest level of
8 accuracy, would have picked up on that, right?

9 MR. FELSEN: Objection.

10 A. They would have picked up and they
11 did pick up -- and they mentioned many times
12 about the number of pending tickets there were.
13 So that was a -- so they did bring that to my
14 attention. It's something that's maybe a little
15 out of ordinary and could be an opportunity for
16 theft, but not necessarily a theft, if that
17 makes any sense.

18 Q. But it was, in fact, a theft because
19 Star submitted a claim to their insurance
20 carrier?

21 A. In fact it was a theft, yes.

22 Q. And it was not a theft that was
23 detected by Voynow? It was reported to you by
24 Vivian? That's what you testified to?

25 A. Yes.

1 M. KOUFAKIS

2 A. Yes.

3 Q. So is this the address -- on Exhibit
4 1, is that the address for the Nissan
5 dealership?

6 A. Technically, no.

7 Q. Is it the address for the office?

8 A. It's the address of the office and
9 Subaru. One is on the first floor, one is on
10 the second floor.

11 Q. Are you able to state today, one way
12 or the other, whether or not these documents
13 were received by anyone in the office or at the
14 Subaru location?

15 MR. FELSEN: Objection. Asked
16 and answered.

17 A. I have no way of knowing.

18 Q. Did you ever ask any of your current
19 or former employees if they had ever seen any
20 type of engagement letter from Voynow?

21 A. No.

22 Q. You can put those aside.

23 Now you had indicated that you recall
24 receiving an engagement letter for purposes of the
25 preparation of your personal income tax return,

1 M. KOUFAKIS

2 correct?

3 MR. FELSEN: Objection.

4 A. I think there was one, a couple of
5 years.

6 Q. So it's your recollection, that at
7 least for a couple of the years, you received
8 written engagement letters from Voynow for your
9 personal tax returns?

10 A. Yes, I believe so.

11 Q. And where did you receive those
12 documents? Do you recall?

13 A. I believe they were mailed to my
14 home.

15 Q. So on the occasions where you did
16 receive engagement letters for your personal tax
17 returns, did you sign them?

18 A. I think I signed one.

19 Q. Was there a reason you didn't sign
20 the others that you received?

21 A. No particular reason.

22 Q. So as you sit here today, there was
23 not anything in the engagement letter that you
24 disagreed with? You just never got around to
25 signing it?

1 M. KOUFAKIS

2 of the time, they had a bin. And as the bills
3 came in, checks were made. And whoever may have
4 normally come in the office would have been
5 presented the checks for signature.

6 Q. And if the records reflect that
7 Senior signed the majority of those checks, then
8 is it fair to say he would have been the one
9 that was present more to sign them?

10 MR. FELSEN: Objection.

11 Q. Or available more to sign them?

12 A. For the most part, yes. But it's
13 clear that he was targeted for certain checks.
14 And to a lesser extent, my brother Steve was
15 targeted for certain checks. And I think it's
16 also fair to say that I was avoided for certain
17 checks and John was avoided for certain checks.
18 Target or preyed might be the correct word.

19 Q. But you never saw any reason to
20 expect that your father would be preyed upon
21 prior to December of 2016?

22 A. Absolutely not, no.

23 Q. Did you ever sign a check without
24 backup documentation?

25 A. I'm sure I have.

1 M. KOUFAKIS

2 Q. Did you ever sign a blank check?

3 A. You asked that --

4 MR. FELSEN: Objection.

5 Q. Sorry.

6 A. -- the one with the DMV account.

7 Q. If you or any other check signer
8 were to sign a check without backup
9 documentation, or that was incomplete in some
10 fashion, do you believe that was a compromise of
11 the dealership's internal control?

12 MR. FELSEN: Objection.

13 A. In hindsight, yes.

14 Q. Do you believe that that created the
15 impression or an environment where employees
16 felt that ownership may not be paying attention?

17 MR. FELSEN: Objection.

18 A. Speculation. I could not say.

19 Q. In hind site, do you think that it
20 did?

21 MR. FELSEN: Objection.

22 A. I believe my father was preyed upon
23 because he was of a trusting nature, and Vivian
24 and Debbie were trusted like a family member.

25 Q. Did you ever ask your father after

1 M. KOUFAKIS

2 Vivian's personal checks were discovered in
3 2016, whether he had backup documentation before
4 he signed them?

5 A. I didn't have to ask him. I knew
6 the answer. There was not -- it was not -- the
7 details were not on the check. There couldn't
8 be backup documentation because it was -- it
9 didn't exist.

10 Q. So is it fair to say that he would
11 have signed those checks without any backup
12 documentation?

13 MR. FELSEN: Objection.

14 A. Yes.

15 Q. Has there been any change or any
16 implementation of written policies as far as the
17 check-signing process?

18 MR. FELSEN: Objection.

19 A. I would not say written policies,
20 no. But I would say in early 2017, I just
21 basically sent the mandate that I'm going to
22 sign the vast majority of the checks.

23 Q. For all of the dealerships?

24 A. For all of the dealerships. In
25 fact, I threatened to fire someone if they

1 M. KOUFAKIS

2 presented my father with a check, that was not a
3 payroll or swap check. That was how emphatic I
4 had gotten. Like, don't even approach him, and
5 if I find out you did, you could be terminated.

6 Q. Now, did you also ask your brother
7 Steve about the checks that he had signed?

8 A. Yes.

9 Q. And did he admit that he signed them
10 without backup documentation?

11 A. He didn't have to because it was the
12 same situation as my father.

13 Q. So you know for a fact he signed
14 them without backup.

15 A. There was none. There was no
16 detail. It was evident.

17 Q. Now, you were notified by a bank
18 around December 1st, 2016 about --

19 A. November 30th, early morning.
20 Between 10:30 and 11.

21 Q. About Vivian, correct?

22 A. No not about Vivian.

23 Q. About a potential concern?

24 A. Yes.

25 Q. So prior to that call from the bank,

1 M. KOUFAKIS

2 Exhibit M. Koufakis 8 for
3 identification, as of this date.)

4 Q. I'm going to show you what we marked
5 as Exhibit 8. And this -- so pages Star 15997
6 through 16009, these are the checks that are
7 payable to Capital One, Vivian's personal
8 account there?

9 A. Yes.

10 Q. And these are issued on Star
11 Nissan's account, correct?

12 A. Yes.

13 Q. Am I correct that Star Nissan did
14 not have a credit card account with Capital One
15 at the time these checks were signed?

16 A. Correct.

17 Q. And pages 16011 through 16024, are
18 the checks payable to Vivian's account at M&T
19 Bank?

20 A. Yes.

21 Q. And the pages designated as 16026
22 through 16036 are the -- I'm sorry, 16034, are
23 the checks payable to HSBC, at Vivian's account?

24 A. Yes.

25 Q. And then can you identify what the

1 M. KOUFAKIS

2 last two checks purport to represent? So that's
3 16035 and 36.

4 A. So 16035 is a check from Star Toyota
5 to Vivian, signed by my brother Steve. And I
6 guess exhibit 16036 is a Star Hyundai check to
7 Vivian, signed by my dad.

8 Q. So would there have been a reason
9 why -- did you ever ask Steve why he signed this
10 check payable to Vivian?

11 A. Yes.

12 Q. What was his response?

13 A. He didn't recall.

14 Q. Did you ever ask your father why he
15 signed the check for 8500, payable to Vivian?

16 A. Yes.

17 Q. What was his response?

18 A. He didn't recall.

19 Q. So as you sit here today, do you
20 know what these checks were for?

21 A. It was nothing good; that I can tell
22 you. They were for nothing good.

23 Q. These were checks that the company
24 was knowingly releasing funds to Vivian for,
25 correct?

1 M. KOUFAKIS

2 A. Yes.

3 Q. So are you contending that these two
4 checks are part of the fraud scheme conducted by
5 Vivian?

6 A. What I'm saying is -- yes, these
7 checks -- what I'm saying is, yeah, these are
8 additional thefts by Vivian.

9 Q. Okay. But you would agree that at
10 least in the case of the first check for \$9,147,
11 Star Toyota is not deceived in knowing that it
12 is paying Vivian, correct?

13 A. Well, Star Toyota is deceived. Star
14 Toyota and my brother Steve are deceived. The
15 Hyundai check, there may be a little bit more to
16 the story.

17 I believe the short story is that they were
18 just simply lied to, they believed the lie, and
19 they signed the checks. That's what I personally
20 believe. They don't recall. That's a reasonable
21 deduction. I can't say with absolute certainty,
22 but I can say it was -- it was not for any
23 legitimate reason.

24 Q. But you would agree, unlike the
25 other checks that are paid to banks, this --

1 M. KOUFAKIS

2 Q. So this specific request relates to
3 Investors Bank.

4 A. I'm sorry. What is your question
5 now?

6 Q. My question was whether you ever got
7 a response to your letter asking that the checks
8 be reversed, whether verbally or in writing?

9 A. Not that I can recall.

10 Q. Did Nissan ever have an account with
11 M&T Bank?

12 A. I don't believe so.

13 Q. What about HSBC?

14 A. I don't believe so, no.

15 Q. And there's no contention that any
16 of the signatures on these checks were forged,
17 correct?

18 A. Correct.

19 Q. So to your knowledge, there would be
20 no reason for any check to be made payable to
21 either Capital One, M&T Bank or HSBC without a
22 business reason, for Star Nissan?

23 MR. FELSEN: Objection.

24 A. Repeat the question.

25 Q. Yeah. Would there have been any

1 M. KOUFAKIS

2 days after it was brought to my attention.

3 Q. Right. You're referring to the
4 first letter on Exhibit 8. But the actual
5 Exhibit 8 documents includes all of the checks
6 from --

7 A. Yeah. I understand what you're
8 saying. I'm not a hundred percent sure. You
9 have to double-check with her.

10 Q. With Jacque? She would know that?

11 A. Yeah, yeah. When we get into the
12 very, very fine details, she would be the best
13 person to...

14 Q. Do you have any reason to doubt, as
15 you sit here today, that however many checks
16 there were, that make up the difference between
17 the 486,000 and the 553,000, that those were all
18 signed by either Senior or Steve?

19 MR. FELSEN: Objection.

20 A. I would not know. It would be
21 speculation.

22 Q. Now, did you have online access to
23 the Investors Bank account?

24 A. Yes.

25 Q. Did your brothers as well and

1 M. KOUFAKIS

2 your father?

3 A. No.

4 Q. Only you did?

5 A. I mean, to this day, I'm pretty much
6 the only one that really has full access. Only
7 Jacque can view. If they want to just stop a
8 check in any dealership, they have to go through
9 me.

10 Q. Did you also receive monthly bank
11 statements from Investors Bank, in addition to
12 whatever online access you had?

13 A. Not me personally. Jacque would get
14 them or they would be generally mailed to the
15 accounting office. I wouldn't normally see
16 them. I take that -- the Toyota ones, I believe
17 get mailed to Toyota. Or some of the Toyota
18 ones get mailed to Toyota. There's quite a few.

19 Q. So as part of your custom and
20 practice running any of the dealerships that you
21 ran or were dealer principal for, did you look
22 over monthly bank statements --

23 A. No.

24 Q. -- or did you just delegate that --

25 A. Delegate.

1 M. KOUFAKIS

2 that you were not in the office on the dates
3 that all of these checks were signed?

4 MR. FELSEN: Objection.

5 A. I would say half I was out of the
6 state of New York.

7 Q. I'm sorry. I didn't catch the full
8 answer. Half of those times?

9 A. I believe half of them I was out of
10 the state of New York. I believe that was done
11 consciously and deliberately.

12 Q. Have you actually, like, matched the
13 checks up to your calendars?

14 A. Yes, yes.

15 Q. Do you believe your brother John was
16 also not at the dealership on the date that any
17 of those checks in Exhibit 8 were signed?

18 MR. FELSEN: Objection.

19 A. No. I believe he was. They just
20 didn't go to him.

21 Q. As part of your investigation, did
22 you ever look at any of the accounting entries
23 that were made in connection with --

24 A. Yes.

25 Q. -- any of those checks listed in

1 M. KOUFAKIS

2 Exhibit 8?

3 A. Yes.

4 Q. And what did you find as part of
5 that investigation?

6 A. I immediately found, a couple of
7 hours after I got the call, that it hit the
8 Nissan account 2211, which was the Nissan
9 factory receivables, and that's when I knew we
10 had a problem. I mean, within an hour or so of
11 getting the phone call.

12 Q. So is it your testimony that all of
13 the checks that were part of Vivian's fraud
14 scheme were recorded by an entry to cash offset
15 by Nissan instead of receivable?

16 A. Yes. To the best of my
17 recollection, yes.

18 Q. And you said that you knew that
19 right away and you knew it was a problem,
20 correct?

21 A. Correct.

22 Q. And are you contending that that's
23 something Voynow should have picked up on?

24 A. Absolutely.

25 Q. And you knew that as of early

1 M. KOUFAKIS

2 reveal communications that you had
3 with a law firm or anybody hired by
4 the law firm, related to litigation,
5 then you're not to answer the
6 question.

7 Q. I'm not interested in what you
8 discussed with your lawyer. I'm interested
9 in -- did you look at, as part of your own
10 investigation, did you look into what you said
11 you saw was an immediate problem when you looked
12 at the accounting entries?

13 A. Again, I'm not at an accountant, but
14 I know there's a problem, no ifs, ands, or buts.
15 That's it.

16 Q. So Vivian was fired in early
17 December of 2016, correct?

18 A. Yeah. I would say by that following
19 Tuesday. So it was --

20 Q. Early December is fine.

21 A. December 6th, the morning of
22 December 6.

23 Q. What, if anything, did you tell the
24 employees about Vivian's termination?

25 MR. FELSEN: Objection.

1 M. KOUFAKIS

2 A. Initially I confronted Vivian the
3 next day.

4 Q. I'm asking what, if anything, you
5 told the employees.

6 A. Me, personally, I didn't tell
7 anything to the employees.

8 Q. Did you make the decision on your
9 own to fire her, or did you consult with
10 your father or brothers?

11 A. Initially, I suspended her when I
12 thought it was 150,000. By Monday, it had grown
13 in excess to \$500,000, at that point.
14 Originally I suspended her, I said, Listen, you
15 got one week to repay the money; otherwise, I go
16 to the police. A few days later, it's in excess
17 of 500,000. I called her sister into my office.

18 Q. My question was really, Did you make
19 the decision?

20 A. Yes.

21 Q. On your own, without consultation
22 with your brothers?

23 A. Yes.

24 Q. And then her responsibilities were
25 assigned to Debbie?

1 M. KOUFAKIS

2 A. I didn't say it either way.

3 Q. Did you take any steps? You said it
4 was not possible? Why is that?

5 A. Because we had five dealerships to
6 run.

7 Q. Did you take any steps to try to
8 find new people at that time?

9 A. Well, yes. As people are getting
10 terminated, they needed to be replaced.

11 Q. No. In, like, December of 2016.

12 A. Well, Vivian was gone so her duties
13 were assigned to Debbie, and then she was
14 suspended on Monday, April 10th.

15 Q. When did you have your conversation
16 with Mr. Whyte?

17 A. I believe it was in mid-December of
18 2016.

19 Q. So at that point, after that
20 conversation, prior to when you terminated
21 Debbie, which was in April of 2017, did you do
22 anything to try to find replacements?

23 A. Yes. As you --

24 Q. No, no. Like, did you put in an ad?
25 Did you try to bring in new people?

1 M. KOUFAKIS

2 A. As -- when Debbie was terminated,
3 Jacque was promoted. And so the focus was
4 getting her ramped up to speed --

5 Q. Understood.

6 A. -- to assume the functions that she
7 currently has. So that was the focus. Then as
8 people underneath her got replaced, she would do
9 the interviewing and the hiring.

10 Q. So before any of that happened, what
11 steps, if any, between December of 2016 and
12 April of 2017, did you take to try to find and
13 hire new people?

14 A. I was not hiring new people. I was
15 still focused on the theft schemes that were at
16 hand. It was only one person, you know, that we
17 knew we had an issue with. We just didn't
18 know -- so now -- not everyone is guilty. Not
19 every one is a thief.

20 So now, you know, did they know and not say
21 anything? Probably, to a certain degree. That's a
22 little hard to ascertain. Over time, you're trying
23 to figure out what happened and take the
24 appropriate measures.

25 Q. Now, you were involved in trying to

1 M. KOUFAKIS

2 will be audited.

3 Did you have a discussion with Mr. Rosenfield
4 about auditing 2017?

5 A. His job was to uncover any theft
6 that had taken place, up until when he was
7 employed.

8 Q. Did you ever have any discussion
9 with him at any point that, Hey, you know, this
10 is costing too much?

11 A. No. I mean, I didn't mind spending
12 the money, provided that we got results. He
13 just was not producing results.

14 Q. So he was not able to provide the
15 proof that you needed to take to the DA, to show
16 actual theft?

17 A. Yeah. I think that's fair to say.

18 Q. He writes: To actually go through
19 each entry, every vendor and every transaction
20 affected would be at too great a cost.

21 Do you see that?

22 A. I didn't put any limitations on the
23 budget with him. So, you know, I -- I see what
24 he's saying.

25 Q. So is it fair to say you never

1 M. KOUFAKIS

2 A. Yes.

3 Q. And did you have the opportunity to
4 suggest any changes or make any factual changes?

5 A. Yes.

6 Q. Did you authorize the filing of this
7 document on behalf of the dealerships that are
8 listed?

9 A. Yes.

10 Q. To your knowledge, did anyone else
11 at any of the dealerships review the complaint
12 for accuracy?

13 A. No.

14 Q. If you turn to paragraph 49 of the
15 complaint, it says that: The plaintiff obtained
16 a forensic accounting firm and initiated a broad
17 investigation of the extent of the thefts.

18 Is that referring to the Rosenfield firm?

19 A. Yes.

20 Q. So is it fair to say that the
21 plaintiffs relied, at least in part, upon the
22 Rosenfield forensic accounting to support the
23 allegations that are in this complaint?

24 MR. FELSEN: Objection.

25 A. Initially -- well, let me clarify

1 M. KOUFAKIS

2 that --

3 MR. FELSEN: To the extent the
4 answer doesn't allow you to reveal
5 any communications with your
6 attorney, you can answer the
7 question.

8 Q. There was no other forensic
9 accountant engaged prior to the time this
10 complaint was filed?

11 A. Correct.

12 Q. After Debbie was fired, did you
13 engage Voynow to assist in the training of
14 Jacque Cutillo?

15 A. Yes.

16 Q. Was that request made verbally?

17 A. I believe so.

18 Q. Did Voynow, in fact, come out to
19 provide services to assist Jacque?

20 A. Yes.

21 Q. Did they do so in 2017?

22 A. Yes.

23 Q. And we have already discussed the
24 fact that Voynow prepared the 2016 corporate tax
25 returns, correct?

1 M. KOUFAKIS

2 ultimately this was one of the last emails.

3 Q. At any point prior to August
4 of 2017, did you ever advise Voynow not to do
5 any work on the 2016 tax return?

6 A. I didn't specifically advise them
7 not to. Again, I was more, you know, my focus
8 was getting the business running, trying to get
9 people prosecuted. Trying to, you know, work
10 with Rosenfield, Jacque, whoever, to clean
11 everything up.

12 Q. Were you aware that Voynow was
13 working on the 2017 tax return?

14 A. No.

15 Q. So you hired Rosenfield in April of
16 2017 to do everything but your tax return,
17 correct?

18 A. They were hired to -- when
19 Rosenfield was hired initially, his job was to
20 look backwards and figure out what happened.

21 Q. And not do the tax return?

22 A. Correct.

23 Q. So --

24 A. And the concern was just trying to
25 get Jacque up to speed. You know, you're taking

1 M. KOUFAKIS

2 a bookkeeper who never did a bank
3 reconciliation, never closed out a month and,
4 you know, you're just throwing her into the deep
5 end. And we are just trying to keep a business
6 running. And now you're trying to get her to do
7 the job of basically two people.

8 Q. Yeah, but the IRS doesn't really
9 care. They have their deadlines, right? And
10 you're aware of what those deadlines were for
11 the tax return, right?

12 A. Yes.

13 Q. So at any point did you instruct
14 Voynow, prior to August of 2016, I'm not going
15 to file my corporate tax return? I need to you
16 get an extension or file whatever you need to
17 file?

18 A. Yes. It was said in that August of
19 '17.

20 Q. After the tax return was already
21 prepared, that's when you told them?

22 A. I'm pretty sure it was prepared. I
23 don't think it was -- I don't know exactly when
24 it was sent to me. But they knew of the thefts,
25 so why would you do it?

1 M. KOUFAKIS

2 A. I received the bills. But in my
3 opinion, not only was the work not done, it
4 either wasn't done, shouldn't have been done or
5 whatever was done was done extremely poorly.
6 That's what I'm saying.

7 Q. Got it. Did you pay any penalties
8 in connection with the 2016 tax return?

9 A. I'm not sure.

10 Q. Have there been any amendments filed
11 to the 2010 through '15 corporate tax returns
12 that Voynow prepared?

13 A. I don't believe so.

14 Q. As a result of what you contend to
15 be theft --

16 A. No, I don't believe they went back.
17 I believe they were trying to take it in '16.
18 And that's still an issue, even until today. I
19 don't believe there were penalties because the
20 IRS owes us money. That's why there are no
21 penalties.

22 Q. For the late filing? Were there
23 penalties in connection with the late filing of
24 the 2016 return?

25 A. I think it's only a penalty if you

1 M. KOUFAKIS

2 owe them money. If don't think there's a
3 penalty if you don't. I don't think there's --
4 again, I'm not a hundred percent sure.
5 Certainly there is no interest. I'm not sure if
6 there's penalties. I don't think so, but I'm
7 not sure.

8 Q. Let's talk about Nick Chester. So
9 when Star entities hired Nick Chester to perform
10 the services in January, February of 2017, was
11 he provided remote access?

12 A. No. He came to the dealership. He
13 lived in Princeton, New Jersey. He needed to
14 stay in a hotel for a few days, which I believe
15 we paid for.

16 Q. He came to the dealership on
17 January 26th and January 27? Does that sound
18 accurate?

19 A. That sounds about right.

20 Q. And he provided you with a report as
21 far as what he reviewed and what he concluded?

22 A. I believe so, yes.

23 Q. And he offered to look further at
24 certain items and issues, correct?

25 A. I believe so, yes.

1 M. KOUFAKIS

2 Q. And you never responded to that
3 offer, correct?

4 A. No, not immediately. No. I don't
5 think I responded particularly to his request
6 after that.

7 Q. He gave you his phone number, to
8 contact him, correct?

9 A. Yes. I think he came in one other
10 time in early June, if I'm not mistaken. But to
11 be perfectly honest with you, you know, there
12 was a lot going on. There was, you know, in
13 March of '17, Vivian was -- not Vivian. I'm
14 sorry --

15 Q. I'm aware of the time line. I'm
16 asking if you ever responded to his invitation
17 or his request to come back --

18 A. To be perfectly honest with you, the
19 more I thought about it, we thought there was a
20 potential conflict of interest, and we felt
21 maybe it was best not to go with someone that
22 Voynow recommended. Maybe somebody that was
23 just a little bit more independent.

24 Q. So is it fair to say you felt that
25 there was a potential conflict of interest as of